

### **REMARKS**

The present document is submitted in response to the Official Action dated September 9, 2008. The Official Action rejected all of the claims under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 5,657,382 to Tamagawa *et al.* (“*Tamagawa*”) in view of U.S. Patent Application Publication No. 2001/0010691 to Shen *et al.* (“*Shen*”), in some cases in further combination with U.S. Patent No. 5,329,578 to Brennan *et al.* The Official Action also rejected Claim 44 under 35 U.S.C. § 101 as being directed to non-statutory subject matter, and objected to Claim 19 for an informality.

Applicants thank the Examiner for the courtesies extended to Applicants’ representative during a telephone interview conducted on October 27, 2008. During the interview, Applicants’ representative and the Examiner discussed the meaning of the term “break-off condition” and also the status of *Shen* as prior art (or not). It was agreed during the interview that *Shen* has a priority date subsequent to that for the present application, and therefore does not constitute prior art with respect to the present application. For at least this reason, Applicants respectfully submit that all of the rejections under 35 U.S.C. § 103(a) have been traversed.

Regarding Claim 44, this claim reads, *inter alia*:

44. A computer program product comprising a tangible computer-readable storage medium having computer-readable program code portions stored therein, the computer-readable program code portions comprising:  
a first executable code portion configured to forward a call from a calling party to a destination defined by a call forwarding party . . .

The Official Action states:

Claim 44 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The language of the claim raises a question as to whether the claim is directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application

producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101. Claims 44, claims the non-statutory subject matter of a computer program product.

See pp. 2-3 of the Official Action.

Applicants note the following passages from the Manual of Patent Examining Procedure (MPEP):

"Functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component . . . **When functional descriptive material is recorded on some computer-readable medium**, it becomes structurally and functionally interrelated to the medium and **will be statutory in most cases** since use of technology permits the function of the descriptive material to be realized . . . **a claimed computer-readable medium encoded with a computer program** is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and **is thus statutory** . . . **When a computer program is recited in conjunction with a physical structure, such as a computer memory**, USPTO personnel should treat the claim as a **product claim**.

See MPEP § 2106.01 (Computer-Related Nonstatutory Subject Matter) (emphasis added).

Applicants note that Claim 44 recites "a tangible computer-readable storage medium having computer-readable program code portions stored therein." Therefore, and in light of the above passages from the MPEP, Applicants respectfully submit that Claim 44 is directed to statutory subject matter, and that the rejection of Claim 44 under 35 U.S.C. § 101 should be withdrawn.

Claim 19 was objected to for depending from a canceled claim. Claim 19 has been herein amended to depend from, and be consistent with, pending Claim 1.

Applicants have amended Claims 1, 25, 44, 46, 48, and 49 to further distinguish the claims of the present application from the cited art. The claims now indicate that the claimed "break-off condition" is "predefined," and that a notification regarding the content of a forwarded call is sent during the forwarding of the call. Applicants respectfully submit that neither of these features is taught or suggested by the cited references, taken alone or in

Appl. No.: 10/069,320  
Amdt. Dated 12/05/2008  
Reply to Official Action of September 9, 2008

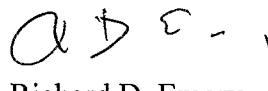
combination. Applicants have also added new Claim 50, which claim depends from Claim 44 and should be allowable for at least the reasons specified above with respect to Claim 44.

### **CONCLUSION**

In view of the foregoing, it is respectfully submitted that all of the claims of the present application are in condition for immediate allowance. It is therefore respectfully requested that a Notice of Allowance be issued. The Examiner is encouraged to contact Applicant's undersigned representative to resolve any remaining issues in order expedite examination of the present application.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



Richard D. Emery  
Registration No. 58,894  
Telephone No. 704-444-1108

**CUSTOMER NO. 00826**  
**ALSTON & BIRD LLP**  
Bank of America Plaza  
101 South Tryon Street, Suite 4000  
Charlotte, NC 28280-4000  
Tel Charlotte Office (704) 444-1000  
Fax Charlotte Office (704) 444-1111

**ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON DECEMBER 5, 2008.**